

Respondent admits in the Joint Motion that he took an active part in a partisan political campaign by soliciting contributions from subordinates and co-workers in violation of 5 U.S.C. § 7324(a)(2) and 5 C.F.R. § 733.122(b)(3). Respondent also waives his right to a hearing and joins in the Special Counsel's recommended penalty--an 84-day suspension from duty. Special Counsel avers in the Joint Motion that,

taking the nature of the violation and all relevant mitigating and aggravating factors into account, "respondent's violation does not warrant removal." The parties urge the Board to adopt as the appropriate discipline "a suspension from duty without pay" for 84 days. The Joint Motion contains the caveat that if the recommended discipline is not deemed appropriate by either the presiding Administrative Law Judge or the Board, the parties "be heard on the appropriateness of the recommended discipline."

The presiding Administrative Law Judge granted the Joint Motion and recommends that the Board accept the agreement on the ground that settlement agreements are favored whenever equity and public interest permit. We hold that section 7325 of the Hatch Act (5 U.S.C. § 7325) precludes the Board from accepting this settlement.

Section 7325 provides that if an individual violates the Act, he shall be removed from his position unless the "Board finds by unanimous vote that the violation does not warrant removal." [Emphasis added.] If that unanimous finding is made, a suspension of not less than 30 days may be imposed "by direction of the Board."

Section 7325 thus requires that the Board must determine unanimously that the violation does not warrant removal in order to consider an alternative penalty. See Special Counsel v. Dukes, HQ120600020 (September 21, 1983).

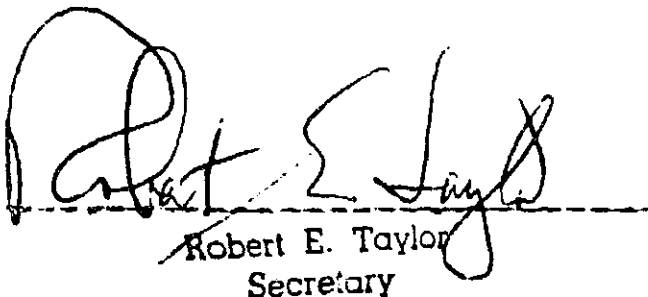
Respondent's admission in the Joint Motion that he solicited political contributions from his subordinates and colleagues for a partisan political campaign would permit the Board to conclude that a violation of section 7324 of the Hatch Act occurred. There are, however, no stipulations or admissions as to the circumstances of the violation or to relevant mitigating or aggravating factors. The Board's statutory mandate under 5 U.S.C. § 7325 precludes the Board from accepting the parties' conclusion that removal is not warranted and that an 84-day suspension is appropriate without appropriate stipulations or admissions of fact. The present record provides an insufficient basis for the Board to fulfill its statutory obligations under section 7325.

Accordingly, the Board VACATES the Order of Settlement, DENIES the Joint Motion for Settlement as submitted, and REMANDS this matter for further proceedings consistent with this Opinion and Order.

SO ORDERED.

FOR THE BOARD:

May 30, 1984
(Date)
Washington, D.C.


Robert E. Taylor
Secretary